

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

AUGUSTA DIVISION

PAUL ANTHONY MCDANIEL,)	
)	
Petitioner,)	
)	
v.)	CV 118-092
)	
RICHARD ROUNDTREE, Sheriff,)	
)	
Respondent.)	

ORDER

After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which objections have been filed. (Doc. no. 9.) The Magistrate Judge recommended dismissing the petition without prejudice because Petitioner has not exhausted his state court remedies and this federal court should not interfere with an ongoing state prosecution. (See doc. no. 4.) Petitioner provides no new information warranting rejection of any portion of the Magistrate Judge's analysis.

To the extent Petitioner does not approve of the state habeas corpus form attached to the Report and Recommendation, he does not allege he attempted to use the form and had it rejected, or that the information on where to obtain prisoner filing forms for state court was incorrect. Rather, he believes, based on his interpretation of the form, that he will not be able to use it. Such conjecture will not suffice.

Moreover, the first page of the attachment clearly explains the documents for all types of prisoner filings are publicly available from the Administrative Office of the Courts. Petitioner is also represented by counsel in his ongoing state court proceedings. Thus,

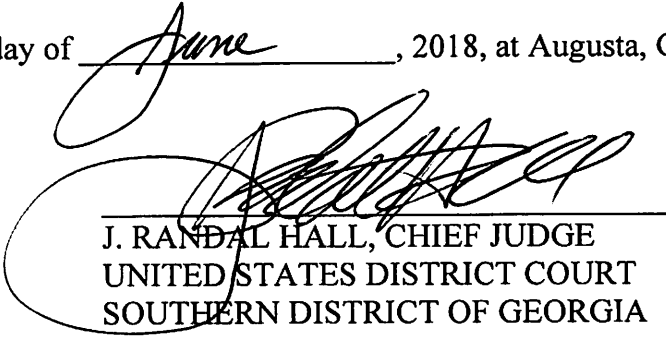
Petitioner has options available to him for raising and exhausting his current claims in state court before raising them in federal court.

Accordingly, the Court **OVERRULES** all objections, **ADOPTS** the Report and Recommendation of the Magistrate Judge as its opinion, **DENIES AS MOOT** the motion to proceed *in forma pauperis*, (doc. no. 2), and **DISMISSES** this petition filed pursuant to 28 U.S.C. § 2241 without prejudice.

Further, a state prisoner seeking relief under § 2241 must obtain a certificate of appealability (“COA”) before appealing the denial of his application for a writ of habeas corpus. See Sawyer v. Holder, 326 F.3d 1363, 1364 n.3 (11th Cir. 2003) (“[S]tate prisoners proceeding under § 2241 must obtain a COA to appeal.”) This Court should grant a COA only if the prisoner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). For the reasons set forth in the Report and Recommendation, and in consideration of the standards enunciated in Slack v. McDaniel, 529 U.S. 473, 482-84 (2000), Petitioner has failed to make the requisite showing. Accordingly, the Court **DENIES** a COA in this case. Moreover, because there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith, and Petitioner is not entitled to appeal *in forma pauperis*. See 28 U.S.C. § 1915(a)(3).

Upon the foregoing, the Court **CLOSES** this civil action.

SO ORDERED this 29th day of June, 2018, at Augusta, Georgia.



J. RANDAL HALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA